

AG Contract No.: KR95-2683TRN  
ADOT ECS File No.: JPA 95-214-Amendment One  
Project No.: STP-215(3) 073 GI 310  
Section: Jct. US-60 MP 324  
Highway Lighting Maintenance  
TRACS: H3606 01C  
Budget Source Item No.: 159

AMENDMENT NO. ONE (1)

INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE WHITE MOUNTAIN APACHE TRIBE

THIS AGREEMENT is entered into 8th September, 2004, Amendment One to JPA 95-214, AG Contract No.: KR95-2683TRN, filed 27 March, 1996, filed with the Secretary of State under No. 20604, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and WHITE MOUNTAIN APACHE TRIBE, ARIZONA, acting by and through its TRIBAL COUNCIL (the "Tribe").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Tribe is empowered by Council Resolution to enter into this Agreement, a copy of which is attached hereto and made a part hereof, and has authorized the undersigned to execute this Agreement on behalf of the Tribe.

The conditions have changed to warrant an amendment, which re-defines the maintenance responsibilities of the parties herein.

THEREFORE, in consideration of the mutual agreements expressed herein, the agreement is amended as follows:

#01  
NO. 20604  
Filed with the Secretary of State  
Date Filed: 09/08/04  
Janice K. Brewer  
Secretary of State

By: Timothy D. Haerwald

## **II. SCOPE OF WORK**

**Article II. 1. c. is deleted and replaced in full as follows:**

1. The State will:

c. Upon completion, approve and accept the Project and provide highway lighting maintenance.

**Article II. 2. is deleted and replaced in full as follows:**

2. The Tribe will:

Upon completion and acceptance of the Project by the State, provide electrical energy to operate the highway lighting.

## **III. MISCELLANEOUS PROVISIONS**

**Articles III. 6 is revised and replaced in full as follows:**

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX:(602) 712-7424

White Mountain Apache Tribe  
Chairman  
P. O. Box 1150  
Whiteriver, AZ 85941

**Articles III. 9 is added in full as follows:**

9. Non-Availability of Funds: Every payment obligation of State and Tribe under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State and/or Tribe at the end of the period for which the funds are available. No liability shall accrue to the State and/or Tribe in the event this provision is exercised, and the State and/or Tribe shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**EXCEPT AS AMENDED herein**, all other terms and conditions of the original Agreement remain in full force and effect.

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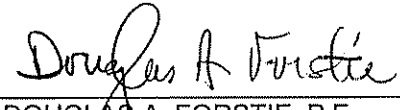
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

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WHITE MOUNTAIN APACHE TRIBE

STATE OF ARIZONA  
Department of Transportation

ACTING By   
DALLAS MASSEY Sr.  
Tribal Chairman

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer, Operations

ATTEST:

ACTING By   
CINDY HARVEY  
Tribal Secretary

**RESOLUTION OF THE  
WHITE MOUNTAIN APACHE TRIBE OF THE  
FORT APACHE INDIAN RESERVATION**

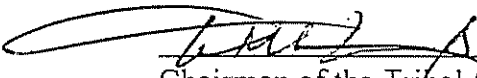
**WHEREAS,** the Tribal Council has received notice of a request received from the Arizona Department of Transportation for an addendum to be made to the Tribe's contract with the Department for Highway Light Maintenance, JPA 95-214, AG Contract No. KR95-2683TRN; and

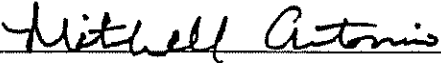
**WHEREAS,** the Tribal Council acknowledges that the proposed amendment will formalize the current practice between the Tribe and the Department, that the Department will provide highway lighting maintenance to the traffic light located at the U.S. 60 and Highway 73 Carrizo junction and the Tribe will provide electrical energy to such location; and

**WHEREAS,** the Tribal Council acknowledges that the proposed Amendment provides that both the State and Tribe's obligations under the Agreement shall depend upon the appropriation of funds allocated for fulfillment of the agreement.

**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves Amendment No. One to the Intergovernmental Agreement between the State of Arizona and the White Mountain Apache Tribe for JPA 95-214, AG Contract No. KR95-2683TRN for highway lighting and maintenance of the Carrizo junction traffic signal.

The foregoing resolution was on AUGUST 6, 2004, duly adopted by a vote of FOUR for and ZERO against by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it by Article IV, Section 1 (a), (i), (s), (t) and (u) of the Amended Constitution and Bylaws of the Tribe, ratified by the Tribe June 27, 1958, and approved by the Secretary of the Interior on May 29, 1958, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984).

  
Chairman of the Tribal Council

**ACTING**   
Secretary of the Tribal Council

JPA 95-214 - AMENDMENT ONE

APPROVAL OF THE WHITE MOUNTAIN APACHE TRIBE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the WHITE MOUNTAIN APACHE TRIBE, ~~an agreement among public agencies which has been reviewed~~ and declare this agreement to be in proper form and within the powers and authority granted to the TRIBE under the laws of the United States. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 11<sup>th</sup> day of August, 2004.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a series of loops and a horizontal stroke at the end.

Tribal Attorney



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION

TRN Main: (602) 542-1680  
Direct: (602) 542-8837  
Fax: (602) 542-3646

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR95-2683TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED September 2, 2004.

JANET NAPOLITANO  
Attorney General

A handwritten signature in black ink, reading "James R. Redpath", is written over a horizontal line.

JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:cw/864575

Enc.